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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
			EXAMINER VENKAT, JYOTHSNA A	
			ART UNIT 1615	PAPER NUMBER
			NOTIFICATION DATE 11/21/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/813,013	<b>Applicant(s)</b> AUBRUN-SONNEVILLE ET AL.	
	<b>Examiner</b> JYOTHSNA A. VENKAT Ph. D	<b>Art Unit</b> 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 11 and 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 13-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/31/04; 8/16/04; 9/28/04</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Receipt is acknowledged of election filed on 9/4/07 and IDS file don 3/31/04; 8/16/04 and 9/28/04.

#### ***Election/Restrictions***

Applicant's election of group I in the reply filed on 9/4/07 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 11-12 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in the reply filed on 9/4/07.

Restriction between the species is hereby withdrawn.

#### ***Priority***

If applicant desires to claim the benefit of a prior-filed application under 35 U.S.C. 119(e), Applicant must provide a certified English translation of the provisional applications. Further, a specific reference to the prior-filed application in compliance with 37 CFR 1.78(a) must be included in the first sentence(s) of the specification following the title or in an application data sheet. For benefit claims under 35 U.S.C. 120, 121 or 365(c), the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of the applications.

If the instant application is a utility or plant application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the specific reference must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a utility or plant

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application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the specific reference must be submitted during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A benefit claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed benefit claim under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted), (2) a surcharge under 37 CFR 1.17(t), and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

If the reference to the prior application was previously submitted within the time period set forth in 37 CFR 1.78(a), but not in the first sentence(s) of the specification or an application data sheet (ADS) as required by 37 CFR 1.78(a) (e.g., if the reference was submitted in an oath or declaration or the application transmittal letter), and the information concerning the benefit claim was recognized by the Office as shown by its inclusion on the first filing receipt, the

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petition under 37 CFR 1.78(a) and the surcharge under 37 CFR 1.17(0) are not required.

Applicant is still required to submit the reference in compliance with 37 CFR 1.78(a) by filing an amendment to the first sentence(s) of the specification or an ADS. See MPEP § 201.11.

*The provisional application is in French and therefore the filing date of the instant application is 3/31/2004.*

Claims 1-10 and 13-19 are pending in the application and the status of the application is as follows:

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required

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feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 13 recites the broad recitation of  $n+p$  is less than, and the claim also recites better still less than 20 which is the narrower statement of the range/limitation.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-10 and 13-19 are rejected under 35 U.S.C. 103(a) as being obvious over the combination of U. S. Patent 6,905,674 ('674) and PGPUB US 20040141930 ('930),

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C.

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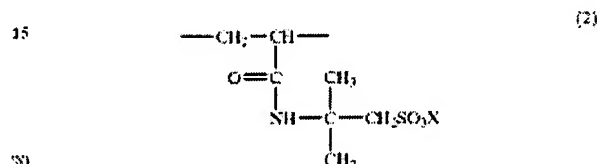
102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2).

Patent '674 teaches the claimed amphiphilic polymer at col. 10, lines 10 et seq. See below.

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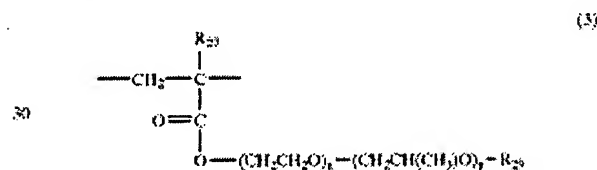
There may be mentioned, more particularly, the crosslinked or non-crosslinked amphiphilic copolymers comprising:

(a) 2-acrylamido-2-methylpropanesulfonic acid (AMPS) units of the following formula (2):



in which X<sup>+</sup> is a proton, an alkali metal cation, an alkaline earth metal cation or the ammonium ion;

(b) and of units of the following formula (3):



in which n and p, which may be identical or different, denote a number of moles and varies from 0 to 30, preferably from 1 to 25 and more preferably from 3 to 20, provided that n+p is less than or equal to 30, preferably less than 25 and better still less than 20; R<sub>20</sub> has the same meaning indicated above in formula (1) and R<sub>25</sub> is a linear or branched alkyl radical containing m carbon atoms ranging from 7 to 22, preferably from 7 to 18 carbon atoms and better still from 12 to 18 carbon atoms.

In formula (2), the cation X<sup>+</sup> more particularly is sodium or ammonium.

Among the monomers of formula (3), there may be mentioned:

esters of (meth)acrylic acid and a polyoxyethylenated C<sub>10</sub>-C<sub>18</sub> fatty alcohol containing 8 EO such as the product GENAPOL C-080 sold by CLARIANT;

esters of (meth)acrylic acid and a polyoxyethylenated C<sub>11</sub> fatty oxoalcohol containing 8 EO such as the product GENAPOL UD-080 sold by CLARIANT;

esters of (meth)acrylic acid and a polyoxyethylenated C<sub>12</sub>-C<sub>14</sub> fatty alcohol containing 7 EO such as the product GENAPOL LA-070 sold by CLARIANT;

esters of (meth)acrylic acid and a polyoxyethylenated C<sub>12</sub>-C<sub>14</sub> fatty alcohol containing 11 EO such as the product GENAPOL LA-110 sold by CLARIANT;

esters of (meth)acrylic acid and a polyoxyethylenated C<sub>16</sub>-C<sub>18</sub> fatty alcohol containing 8 EO such as the product GENAPOL T-080 sold by CLARIANT;

esters of (meth)acrylic acid and a polyoxyethylenated C<sub>16</sub>-C<sub>18</sub> fatty alcohol containing 15 EO such as the product GENAPOL T-150 sold by CLARIANT;

esters of (meth)acrylic acid and a polyoxyethylenated C<sub>16</sub>-C<sub>18</sub> fatty alcohol containing 11 EO such as the product GENAPOL T-110 sold by CLARIANT;

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Patent '674 at col.11 teaches:

esters of (meth)acrylic acid and a polyoxyethylenated  $C_{16}$ - $C_{18}$  fatty alcohol containing 20 EO such as the product GENAPOL T-200 sold by CLARIANT;

esters of (meth)acrylic acid and a polyoxyethylenated  $C_{16}$ - $C_{18}$  fatty alcohol containing 25 EO such as the product GENAPOL T-250 sold by CLARIANT;

esters of (meth)acrylic acid and a polyoxyethylenated  $C_{16}$ - $C_{22}$  fatty alcohol containing 25 EO and/or a polyoxyethylenated  $C_{16}$ - $C_{18}$  fatty isocetanol containing 25 EO.

There will more particularly be selected:

(i) those which are non-crosslinked, for which  $p=0$ ,  $n=7$  or 25,  $R_{27}$  is methyl and  $R_{29}$  is a mixture of  $C_{12}$ - $C_{14}$  or  $C_{16}$ - $C_{18}$  alkyl.

(ii) those which are crosslinked, for which  $p=0$ ,  $n=8$  or 25,  $R_{27}$  is methyl and  $R_{29}$  represents a mixture of  $C_{16}$ - $C_{18}$  alkyl.

These polymers are described and synthesized in EP-1, 069,142. These particular amphiphilic polymers may be obtained according to conventional free-radical polymerization methods in the presence of one or more initiators such as for example azobisisobutyronitrile (AIBN), azobisdimethylvaleronitrile, 2,2-azobis[2-amidinopropane] hydrochloride (ABAH=2,2-azo-bis-[2-aminopropane] hydrochloride), organic peroxides such as dilauryl peroxide, benzoyl peroxide, tert-butyl hydroperoxide, and the like, inorganic peroxide compounds such as potassium or ammonium persulfate, or  $H_2O_2$  optionally in the presence of reducing agents.

These amphiphilic polymers may be obtained in particular by free-radical polymerization in a tert-butanol medium in which they precipitate. Using polymerization by precipitation in tert-butanol, it is possible to obtain a distribution of the size of the polymer particles which is particularly favorable for its uses.

The reaction may be performed at a temperature of between 0 and 150° C., preferably between 10 and 100° C., or at atmospheric pressure or under reduced pressure. It may also be carried out under an inert atmosphere, preferably under nitrogen.

The polymers in accordance with the invention are preferably partially or completely neutralized with an inorganic or organic base such as those described above.

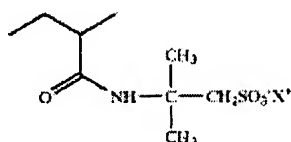
The mol % concentration of the units of formula (2) and of the units of formula (3) in the amphiphilic polymers according to the invention varies according to the desired cosmetic application, the nature of the emulsion (oil-in-water or water-in-oil) and the desired rheological properties of the formulation. They may vary between 0.1 and 99.9 mol %.

The scarcely hydrophobic amphiphilic AMPS polymers according to the invention will be more appropriate for thickening and/or stabilizing the oil-in-water emulsions. The molar proportion of units of formula (3) will preferably vary from 0.1% to 50%, more particularly from 1% to 25% and more particularly still from 3% to 10%.

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Thus patent teaches claimed oil in water emulsions and also the species. Patent also teaches emulsifiers under examples. The difference between the patent and the instant application is patent does not teach the claimed mol percent for formula I and formula II. However PGPUB '930 also teaches the same claimed amphiphilic polymer. See below for formula I and II. Note that p can be zero.

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[0017] wherein X\* is chosen from a proton, alkali metal cations, alkaline-earth metal cations and an ammonium ion.

[0018] Further disclosed herein is the use of the at least one amphiphilic polymer to stabilize the viscosity of an oxidizing O/W emulsion comprising at least one fatty alcohol and at least one surfactant chosen from nonionic and anionic surfactants.

[0019] However, other characteristics, aspects, subjects and advantages of the invention will emerge even more clearly on reading the description and the examples that follow.

[0020] As disclosed herein, the at least one amphiphilic polymer comprises at least one 2-acrylamido-2-methylpropanesulphonic (AMPS) acid unit in free form or partially or totally neutralized form and at least one hydrophobic unit comprising from 6 to 50 carbon atoms.

[0021] The term "amphiphilic polymer" means any polymer comprising both a hydrophilic portion and a hydrophobic portion such as a fatty chain.

[0022] The hydrophobic portion present in the at least one amphiphilic polymer disclosed herein can comprise, for example, from 12 to 22 carbon atoms.

[0023] The at least one amphiphilic polymer disclosed herein has a number-average molecular weight ranging, for example, from 1 000 to 20 000 000 g/mol, such as from 20 000 to 5 000 000 g/mol, and further such as from 100 000 to 1 500 000 g/mol.

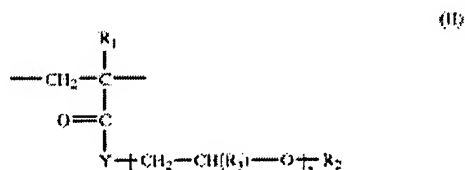
[0024] The at least one amphiphilic polymer disclosed herein may be crosslinked or non-crosslinked. In one embodiment, crosslinked amphiphilic polymers are used.

[0025] When the at least one amphiphilic polymer is crosslinked, the crosslinking agents used may be chosen from the polyolefinically unsaturated compounds commonly used for crosslinking polymers obtained by free-radical polymerization.

PGPUB '930 also teaches claimed formula III. See below.

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[0034] The hydrophobic units of these copolymers are, for example, chosen from the acrylates and acrylamides of formula (II) below:



[0035] wherein:  $R_1$  and  $R_2$ , which may be identical or different, are each chosen from a hydrogen atom and linear

and branched  $C_1$ - $C_{18}$  alkyl radicals, such as a methyl radical; Y is chosen from O and NH;  $R_2$  is a hydrophobic hydrocarbon-based radical chosen from those comprising from 6 to 50 carbon atoms such as from 12 to 22 carbon atoms; x is a number of moles of alkylene oxide and ranges from 0 to 100.

[0036] The hydrophobic hydrocarbon-based radical  $R_2$  is, for example, chosen from linear  $C_6$ - $C_{18}$  alkyl radicals, for example, n-hexyl, n-octyl, n-decyl, n-hexadecyl and n-dodecyl; branched and cyclic  $C_6$ - $C_{18}$  alkyl radicals, for example, cyclododecane ( $C_{12}$ ) and adamantane ( $C_{10}$ );  $C_6$ - $C_{18}$  perfluoroalkyl radicals, for example, the group of formula  $-(CH_2)_2-(CF_2)_9-CF_3$ ; cholesteryl radicals ( $C_{27}$ ) and cholesterol ester residues, for example, the cholesteryl oxyhexanoate group; and aromatic polycyclic groups, for example, naphthalene and pyrene.

[0037] In one embodiment, the unit of formula (II) comprises at least one alkylene oxide unit ( $x \geq 1$ ) such as a polyoxyalkylenated chain. The polyoxyalkylenated chain, for example, comprises units chosen from ethylene oxide units and propylene oxide units. In one embodiment, the polyoxyalkylenated chain comprises ethylene oxide units. The number of oxyalkylene units ranges, for example, from 3 to 100, such as from 3 to 50 and further such as from 7 to 25.

[0038] Among these polymers, mention may be made of:

[0039] crosslinked or noncrosslinked, neutralized or non-neutralized copolymers comprising from 15% to 60% by weight of AMPS units and from 40% to 85% by weight of ( $C_6$ - $C_{18}$ )alkyl(meth)acrylamide units or of ( $C_6$ - $C_{18}$ )alkyl(meth)acrylate units, relative to the total weight of the polymer, such as those described in patent application EP-A-750 899; and

[0040] terpolymers comprising from 10 mol % to 90 mol % of acrylamide units, from 0.1 mol % to 10 mol % of AMPS units and from 5 mol % to 80 mol % of n-( $C_6$ - $C_{18}$ )alkylacrylamide units, such as those described in U.S. Pat. No. 5,089,578.

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PGPUB teaches the mol percent of formula I and the claimed mole percent of formula I is within the mole percent taught by PGPUB. PGPUB also teaches the mol percent of formula II and mole percent of formula III. See below.

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and branched  $C_1$ - $C_6$  alkyl radicals, such as a methyl radical; Y is chosen from O and NH;  $R_2$  is a hydrophobic hydrocarbon-based radical chosen from those comprising from 6 to 50 carbon atoms such as from 12 to 22 carbon atoms; x is a number of moles of alkylene oxide and ranges from 0 to 100.

[0036] The hydrophobic hydrocarbon-based radical  $R_2$  is, for example, chosen from linear  $C_6$ - $C_{18}$  alkyl radicals, for example, n-hexyl, n-octyl, n-decyl, n-hexadecyl and n-dodecyl; branched and cyclic  $C_6$ - $C_{18}$  alkyl radicals, for example, cyclododecane ( $C_{12}$ ) and adamantane ( $C_{10}$ );  $C_6$ - $C_{18}$  perfluoroalkyl radicals, for example, the group of formula  $-(CH_2)_2-(CF_2)_x-CF_3$ ; cholesteryl radicals ( $C_{27}$ ) and cholesterol ester residues, for example, the cholesteryl oxyhexanoate group; and aromatic polycyclic groups, for example, naphthalene and pyrene.

[0037] In one embodiment, the unit of formula (II) comprises at least one alkylene oxide unit ( $x \geq 1$ ) such as a polyoxyalkylenated chain. The polyoxyalkylenated chain, for example, comprises units chosen from ethylene oxide units and propylene oxide units. In one embodiment, the polyoxyalkylenated chain comprises ethylene oxide units. The number of oxyalkylene units ranges, for example, from 3 to 100, such as from 3 to 50 and further such as from 7 to 25.

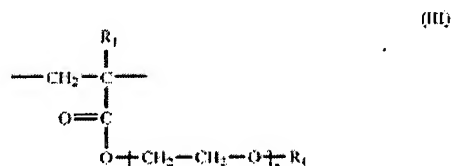
[0038] Among these polymers, mention may be made of:

[0039] crosslinked or noncrosslinked, neutralized or non-neutralized copolymers comprising from 15% to 60% by weight of AMPS units and from 40% to 85% by weight of ( $C_8$ - $C_{18}$ )alkyl(meth)acrylamide units or of ( $C_8$ - $C_{18}$ )alkyl(meth)acrylate units, relative to the total weight of the polymer, such as those described in patent application EP-A-750 899; and

[0040] terpolymers comprising from 10 mol % to 90 mol % of acrylamide units, from 0.1 mol % to 10 mol % of AMPS units and from 5 mol % to 80 mol % of n-( $C_6$ - $C_{18}$ )alkylacrylamide units, such as those described in U.S. Pat. No. 5,089,578.

[0041] Mention may also be made of non-crosslinked and crosslinked copolymers of partially or totally neutralized AMPS and of dodecyl methacrylate, and non-crosslinked and crosslinked copolymers of partially or totally neutralized AMPS and of n-dodecylmethacrylamide, such as those described in the Morishima articles mentioned above.

[0042] Mention may also be made, for example, of copolymers comprising 2-acrylamido-2-methylpropanesulphonic (AMPS) acid units of formula (I) and units of formula (III) below:



[0043] wherein x is an integer ranging from 3 to 100, such as from 5 to 80 and further such as from 7 to 25;  $R_2$  has the

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same meaning as that given above in formula (II) and R<sub>4</sub> is chosen from linear and branched C<sub>6</sub>-C<sub>22</sub> alkyl radicals such as linear and branched C<sub>10</sub>-C<sub>22</sub> alkyl radicals.

PGPUB teaches the mole percent for formula II or III. See below.

[0068] In one embodiment, for the sparingly hydrophobic polymers, the molar proportion of units of formula (II) or (III) ranges from 0.1% to 50%, such as from 5% to 25% and further such as from 10% to 20%.

[0069] The monomer distribution in the polymers disclosed herein may be, for example, alternating, block (including multiblock) or random.

[0070] The viscosities, measured at 25° C. using a Brookfield viscometer, needle No. 7, of the aqueous 1% solutions range, for example, from 20 (00) mPa.s to 100 (00) mPa.s such as from 60 (00) mPa.s to 70 (00) mPa.s.

[0071] The at least one amphiphilic polymer disclosed herein is present in the oxidizing O/W emulsions in a concentration ranging from 0.01% to 10% by weight, such as from 0.01% to 5% by weight, and further such as from 0.01% to 2% by weight, relative to the total weight of the emulsion.

PGPUB '930 also teaches claimed emulsifiers at paragraphs 88-94 and weight percent at paragraph 94. See the examples.

Accordingly, it would be obvious to one of ordinary skill in the art at the time the invention was made to prepare compositions of patent '674 using the same amphiphilic polymer claimed and use the mole percent taught by PGPUB '930 for the claimed amphiphilic polymer with the reasonable expectation of success that the claimed compositions are also useful for application to skin. This is a prima facie case of obviousness.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re*

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*Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-10 and 13-19 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-2 and 10-29 of U.S. Patent No. 6,905,674 ('674) in view of PGPUB US2004/014,1930 ('930).

Both the instant application and the claims of the patent are claiming the same amphiphilic polymer. See the reasons under 103 rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT Ph. D whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/JYOTHSNA A. VENKAT/ Ph. D**  
**Primary Examiner**  
**Art Unit 1615**

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